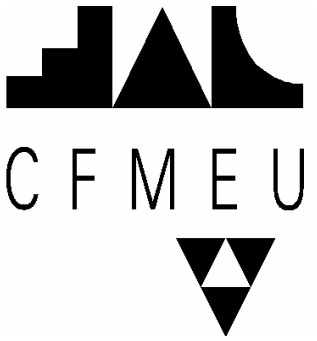
Submission to the Senate Inquiry into the Building and Construction Industry Improvement Bill 2003



Construction, Forestry, Mining and Energy Union,
Construction & General Division.

Victorian Branch

May 2004

Introduction

The Construction, Forestry, Mining and Energy Union, Construction and General Division, Victorian Branch (CFMEU) is the major union in Victoria's building and construction industry. The CFMEU plays a leading role in policy development on issues which have an impact on workers in the construction industry. Currently approximately 25,000 Victorians are members of the CFMEU.

In our respectful submission the Building and Construction Industry Improvement Bill 2003 (the Bill) should be rejected in its entirety. The construction industry in Victoria is healthy and productive. Unions are an integral part of the industry and are central in advancing health and safety and protecting wages and conditions of employment.

We believe that this submission demonstrates that calls for draconian laws are nothing more than the pursuit of a blatantly political agenda to deny Victorian construction workers their right to protect their wages and conditions of employment with the assistance of their union.

1. VICTORIAN CONSTRUCTION INDUSTRY – PROFILE AND STATISTICS

Detractors of the Victorian commercial construction sector refuse to recognise that the industry, and the broader Victorian economy and labour market, are in good shape. Irrefutable statistics show that the construction industry is not in crisis and in fact it is flourishing.

The Master Builders Association of Victoria (MBAV) describes the industry as "buoyant" in a recent press release (see **Appendix A**), and the statistics show that this is correct. In February, March and April 2003 building activity in Victoria exceeded $1billion per month. Total building activity for April 2003 was $1,315,100,000. This included:

- 194 retail projects with a total value of $60,100,000,
- 100 industrial projects with a total value of $16,200,000,
- 37 hospital or healthcare projects with a total value of $78,400,000, and
- 147 public buildings with a total value of $211,300,000.

Source: Building Commission Victoria, 'Building Activity Profile' Volume 7 Number 4.

This high level of work indicates a vibrant and healthy industry. The national submission of the CFMEU deals with the issue of productivity. There the CFMEU presents the evidence that the Australian construction is world class in terms of quality and productivity.

Other indicators of health in the industry are the profit levels and executive remuneration evident in larger corporations. The listed property trust companies

rely heavily on a productive and efficient construction industry. Profits in the sector are high, as is executive pay.

Executive	Company	Total Pay
Frank Lowy	Westfield	$13.9 million
Andrew Scott	Stockland	$1.34 million
Matthew Quinn	Centro	$1.23 million
Brendan Crotty	Australand	$1.12 million
Bob Hamilton	Mirvac	$1.02 million
Chris O'Donnell	Investa	$.879 million

Source: Australian Financial Review, p60 13/11/03

MIRVAC

Public posturing and predictions of doom are not rare in the construction industry. For example, when building workers sought shorter hours through enterprise bargaining, Mirvac announced that if the demand was met they would no longer build projects in Victoria. Four years down the track Mirvac has seven major developments in Victoria and the company is posting healthy profits.

While people may choose to talk down the Victorian construction industry to improve their negotiating position or for broader political motivations the facts of the matter are irrefutable.

- Mirvac 2002/3 net profit after tax $198,800,000
- Pay for Managing Director Bob Hamilton $1,015,915

Investment in Victoria

- **Yarra's Edge** development at Docklands incorporating 1900 dwellings, only a few of which remain unsold.

- **Waverley Park** 1500 dwellings to be constructed on the site of VFL Park over the next 7-10 years
- **The Heath** 502 homes to be built
- **SY21** 382 apartments constructed in South Yarra, only 8 unsold
- **Beacon Cove** 368 apartments and 470 houses have been completed in Stage 1 with a further 116 dwellings to be completed. Mirvac describe the development as 'hugely successful.
- **Canterbury** construction of 69 luxury apartments is planned to commence in mid 2004
- **Lorne** construction of 46 apartments is planned in this seaside resort.

Similarly, other major listed Australian companies are getting on with the job.

LEND LEASE (INCORPORATING THE BUILDER BOVIS LEND LEASE)

- Operating Profit after tax $230,000,000
- Pay for managing Director Greg Clarke $1,873,292
- Pay for Finance director Tsenin $2,294,938
- Pay for Director Taylor $2,096,046

Investment in Victoria

- $2,5000,000,000 Victoria Harbour development

LEIGHTONS

- 2002/3 Profit after tax $140,000,000 (this amount is after the write-off for Nextgen, a venture not associated with the Victorian construction industry)
- Pay for Wal King, Managing Director, $6,494,545
- Pay for director Adarmsas $3,003,783

- Pay for Director Faulkner $3,068,708

Investment in Victoria

- $294,000,000 Spencer St Station Redevelopment
- Collins Street tower, 12 of 13 floors pre-leased

THE VICTORIAN ECONOMY – POWERING AHEAD

- Victorian economic growth for 2001-2 was 4.9%, above the national average of 3.9%
- State Final Demand grew in 2001-02 by 5.6%
- Private business investment in Victoria grew by 14.7% in the year to March 2003
- Investment in non-residential buildings grew by 23.3% over the year
- The Victorian unemployment rate in May 3003 was 5.9%, the second lowest of all the states.
- The Victorian unemployment rate has been lower than the national rate for 3 years.

Source: Victorian Government Submission AIRC C2003/2597 July 2003

PRODUCTIVITY

As outlined in the CFMEU's National submission to the Committee, the Australian construction industry is world class. It is an industry that in 2001-2002 it directly accounted for 5.5% of gross domestic product and 7.5% of employment.

In Discussion Paper Fifteen released by the Cole Royal Commission (Discussion Paper), two aspects of regulation - productivity and reform - were addressed. The

paper collected data from more than twenty international studies that attempted to assess industry performance by four key indicators: productivity, cost, time and quality. The studies drew on data from the G6 nations of the UK, France, Germany, the USA, Canada and Japan, as well as Singapore and Australia. The Paper concluded that: -

- Australia's construction industry performance is well placed in international comparisons with the G6 countries.
- In 23 international studies referred to in the discussion paper Australia was ranked 2nd or better in 16 of the studies.
- On productivity Australia was ranked 2nd in 5 of the 7 reports.
- On cost per square metre Australia was ranked 1st in 2 studies, and 2nd in 7 of the remaining 10 studies.
- On the issue of time to complete projects, Australia was consistently ranked 2nd in all the studies.

According to the Discussion Paper's analysis the productivity performance of the Australian industry is equivalent to that of Japan and Germany, and slightly better than France and the United Kingdom. This high labour productivity is based on the desirable trilogy of a highly paid, highly skilled workforce that embraces new technology.

Despite the Discussion Paper's own warnings as to the possible inaccuracies of comparative data, on any analysis this is significant evidence that the Australian building and construction industry *is* internationally competitive and highly productive. This first section of the Discussion Paper was in fact a glowing affirmation of the world-class standard of the Australian building and construction industry.

There is incontrovertible evidence that the industry is productive and competitive, with one report putting only the United Kingdom in front of Australia (Access

Economics and World Competitive Practices, 1999) whilst another report by the OECD found that only Canada had a higher output per person (Employment Studies Centre, University of Newcastle, 1999)

According to a 2002 Productivity Commission report, "*Australia's Service Sector: A Study in Diversity"* in the period 1984-1998, the productivity growth for the Australian construction industry exceeded the OECD average.

Just as Australia's productivity is competitive by world standards, the Victorian construction industry is competitive in comparison with other major centres. The Australasian Building Rate Comparison for 2003 showed that Melbourne's building costs were lower than those in Sydney in 13 sectors out of 23.

Table. Australian Dollar per Square Metre

Building Type	Melbourne	Sydney
Multi Unit – Low Rise	1,230	1,220
(Medium Quality) – High rise	1,710	1,530
(High Quality) – Low Rise	1,580	1,430
(High Quality) – High Rise	2,000	2,000
Podium Car Parking	650	500
Basement Car Parking	800	800
Commercial Average standard Offices		
- Low Rise	1,480	1,370
- Medium Rise	1730	1,880
- High Rise	2,200	2,230
High Standard Offices	2,800	2,850
Industrial		
Light Industrial	510	510
Heavy Industrial	700	710

Attached Offices	1,250	1,370
Hotel *Includes FF&E		
Resort	2,400	2,120
3 Star Budget*	2,300	1,860
5 Star Luxury*	3,000	3,050
Suburban Motel*	1,610	1,630
Health		
District Medical Centre	1,530	1,420
District Hospital	2,100	2,130
Nursing Home	1,510	1,530
Retail		
District Centre	1,050	1,010
Regional Centre	1,410	1,420
Strip Shopping	810	760

Rates are 3rd Qtr 2002 Inclusive of preliminaries but exclusive of site works, services, land and interest costs.

Also demonstrating the productivity of Victoria's construction industry are case studies produced by the Property Council (see **Appendix B**). Taking the SCL Clinical Trials Manufacturing Facility in Parkville Victoria as an example, the Property Council case study demonstrates clearly that there are many factors that contribute to the productivity, or lack of productivity, of a construction project.

Amongst the drivers of excellence noted are stakeholder involvement, an adequate brief, an understanding of the client's business and an experienced project manager. The end result, according to the Property Council, is a world class facility. This is hardly consistent with the view promoted by the Commonwealth Government and others that there is a crisis in the construction industry.

2. ANALYSIS OF ROYAL COMMISSION

The CFMEU's opinion of the Cole Royal Commission (CRC) is well known. We do not seek to outline in this submission all of the reasons behind our core belief that the CRC was conceived in deceit, conducted in spite and concluded in irrelevance.

What this submission will do is make some brief comments on the conduct of the Commission in particular matters that relate to Victoria.

ABLE DEMOLITIONS AND THE NATIONAL GALLERY

Able complained that the Victorian Office of Major Projects (OMP) delayed in approving their tender for demolition work at the project because they did not have an agreement with the CFMEU.

OMP argued that they required all sub-contractors to be covered by a certified agreement, presumably to ensure that workers could not access protected industrial action. OMP were concerned that Able's agreement was not capable of covering the work in question.

The CRC chose to ignore the fact that the Able certified agreement could not cover the work, and they pushed the theory that Able were being obstructed because they did not have a certified agreement with the CFMEU.

What is now clear is that even the Office of Employment Advocate (OEA) knew the certified agreement may not cover the work, saying in an internal document:

> "I'm a bit unsure about the coverage of PR's *[Paul Rossi - Able, Director],* Enterprise Agreement. Clause 2.2 springs to mind….does it cover the

work he is doing sufficiently well?? Link this in with section 4 (Application) of the Parent Award (A0516) and you'll see my drift"

The CFMEU was in furious agreement with the OEA and in September 2000 we launched a Federal Court case against Able which alleged that the certified agreement did not apply and that Able breached the building industry Award at the National Gallery Site.

In September 2002 Able settled the Federal Court matter and conceded that the Award was binding on it at the site and consented to the Court making orders that Able had breached the Award.

A critical matter in the dispute between the union and Able was whether there was an agreement in place which covered the type of work that they were undertaking at the National Gallery. The CRC was not interested in this aspect and the proceedings continued under the erroneous assumption that they had an agreement in place and the real issue was that it was an agreement with the AWU and not the CFMEU. This case study demonstrates that the CRC was not interested in matters which would disturb their preconceived misconceptions. The CRC wanted to believe that the issue was about Able having an agreement with the AWU and not interested that it may be about the fact that the Able employers were not covered by a certified agreement for work performed at the National Gallery.

By refusing to recognise that there are two sides to every story, the OEA promoted disputation at the site. Had OMP been left to follow due process, unnecessary disputation would have been avoided.

Finally, the serious injury of an Able employee, caused by Able's unsafe work practices may also have been avoided.

ABLE AND PORT MELBOURNE HOUSING PROJECT

Able complained that Worksafe took action against them for an unsafe work practice. While giving evidence a Worksafe inspector told the CRC that as he walked out of the block of flats on the ground floor some material thrown from the top floor hit the ground and then deflected onto his leg.

The CRC ignored this evidence of the risk of serious injury of a public official while discharging his duties. They instead attacked the CFMEU and Worksafe, for taking the issue of safety in the construction industry seriously.

OTHER SAFETY PROBLEMS IGNORED

1. At the Victorian State Netball and Hockey Centre project a concrete platform gave way and a worker fell 9 metres, sustaining serious injury. The CRC were not at all interested in the collapse, they were only interested in the steps taken by the employees to ensure that the problem that had caused the collapse was not systemic through the site.

2. The CRC was shown a video of the aftermath of a shocking incident, which saw a man crushed to death on a Melbourne building site. The video was shown at Martin Kingham's request, in the first week of the CRC hearings. For the remainder of the hearings, no further action was taken to investigate the matter as a case study. Unless a union was the target, the CRC was not interested.

REFUSAL TO INVESTIGATE BASTARDISATION OF APPRENTICE

A young apprentice from regional Victoria and his mother wrote to the union complaining of mistreatment at work. Included in the letters were claims that the apprentice was:

- Forced to work with a broken arm in plaster
- Forced to drive to work with a broken arm in plaster
- Forced to work on a roof in 42° temperatures
- Receiving verbal abuse on a daily basis
- Being unpaid for weeks at a time
- Being underpaid by a total of $20,000
- Being forced to work on site instead of attending TAFE based training
- Being summarily dismissed for no valid reason

The union's duty in such circumstances is to investigate such claims. The CRC had all of the allegations listed above, yet they chose to castigate the union for following up on the complaint. The mistreatment of the apprentice was not of interest to the CRC. This was because the employer involved, tragically committed suicide, and the CRC was motivated to interpret the union's role in the worst possible way.

(More details on these cases and other matters from the CRC can be found at **Appendix C**).

3. WAGE RATES & PATTERN BARGAINING

The Terms of Reference for the Senate Inquiry at 2(g)(ii) is in the following terms:

> (g) employment-related matters in the building and construction industry, including:
>
> (ii) the relevance, if any, of differences between wages and conditions of awards, individual agreements and enterprise bargaining agreements and their impact on labour practices, bargaining and labour relations in the industry, and

Victoria does not have a State industrial relations system and consequently is solely covered by the Federal System. Accordingly, in Victoria construction workers may have their conditions regulated by certified agreements (union or non-union), by the secret provisions of an AWA, unregistered individual agreement, by an Award or Schedule 1A Order.

This submission will deal with the difference between the wage rates contained in the current agreement negotiated between industry parties and the rates contained in the Schedule 1A minimum rates order. We will finally submit that the pattern outcome which has been achieved in the commercial construction industry (after agreement reached with the industry participants – including the MBA, the major builders and the union) is one that is a fair and effective outcome. By this we mean that it delivers fair wages and conditions for the employees, it provides certainty for the industry and a "level playing field" and obviously the employers are still able to make profits decent profits as we have indicated with some examples we have provided in Section 1 of our Submissions. Obviously the union seeks that all employees in the construction industry are covered by a "pattern agreement". The union's officials seek to achieve such an outcome wherever possible.

The Construction Industry Sector – Minimum Wage Order – Victoria 1997 (Schedule 1A) was varied on 25/7/03 (PR935214) in line with the National Wage Case. The hourly rate for a Construction Worker Level 7 (including workers who have a relevant trade) was increased to $14.26 per hour, or $541.88 for a 38 hour week.

Workers paid under Schedule 1A have no entitlement to be paid for overtime worked, 5 days sick leave per year, no carer's leave and no bereavement leave. Schedule 1A workers can only access the 5 minimum entitlements contained in Schedule 1A.

While Schedule 1A remains in force the potential exists for building workers to be forced to work for greatly reduced wages and conditions. The table below compared the pay and entitlement of carpenters working under a current CFMEU certified agreement, under the National Building and Construction Industry Award 2000 (Award) and under Schedule 1A.

	Hourly Rate - $	Weekly Pay - $	Total pay for 56 hour week (10 hours Mon – Thur & 8 hours Fri & Sat - $	Sick leave entitlement – days per year
Certified Agreement	21.36	811.68	1217.52	10
Award	16.06	610.28	1072.02	10
Schedule 1A	14.26	541.88	541.88	5

As shown above, work volumes are high and profits are up. It therefore should come as no surprise that building workers are seeking their fair share. This is occurring in the housing sector as well as in commercial construction. The Housing Industry Association (HIA) has stated that:

- Rates for tradespeople range from $35 to $50 per hour
- 11% increase in the last 12 months.
- Carpenter's rate in Queensland increased from $27 per hour to $50
- Bricklayer's rate in Queensland increased from $780 per 1000 bricks to $1 a brick
- Bricklayers in Victoria had a 30% increase
- Renderers in Victoria had a 30% increase
- Painters in Victoria had a 20% increase
- Plasterers in Victoria had a 50% increase

Source: Australian Financial Review p60 13/11/03

This is in contrast to increases in the CFMEU agreement of 3.2%, an amount equal to CPI (see **Appendix D**). This hardly indicates an industry that is out of control or a union that is pursuing unreasonable demands. It also indicates that an agreed industry outcome can assist in reducing the damaging boom and bust cycle.

The table below demonstrates that property professionals have enjoyed increases in pay that exceed those of building workers regulated by certified agreements to which the CFMEU is party.

PROPERTY PROFESSIONALS' REMUNERATION

	EAST COAST AVERAGE AS at May 2003	**MEDIAN INCREASE OR REVIEWS Apr – Sep 2003**	**PREDICTED INCREASE FOR NEXT REVIEW Oct 2003 – Sep 2004**
POSITION		**MEDIAN**	**MEDIAN**
Property funds management portfolio/asset manager ($200m-500m funds/portfolio)	$167,000	4.5%	3.8%
Property securities junior analyst	$78,000	3.5%	3.8%
Property finance relationship manager (mid level)	$115,000	7.5%	4.5%
Property development manager (mid level)	$155,000	5.0%	5.0%
Corporate real estate manager (mid level)	$84,000	3.8%	4.0%
Shopping centre manager (30-50,000sqm GLA)	$120,000	4.0%	4.3%
Real estate sales manager	$135,000	5.0%	5.5%
Project architect (mid level)	$65,000	3.5%	5.0%

Consulting project manager (mid level)	$85,000	3.5%	5.0%
Quantity surveyor (mid level)	$59,000	3.5%	5.0%
Building project manager (mid level)	$116,000	4.3%	5.0%
Housing operations manager	$80,000	4.0%	5.0%

This evidence indicates that certified agreements in Victoria to which the CFMEU is party deliver reasonable outcomes. They ensure that building workers are adequately compensated for their labour (in contrast to the paltry conditions contained in Schedule 1A). The agreements also provide certainty and stability, in contrast to the boom and bust that can be witnessed in the housing sector.

PATTERN BARGAINING

Through its proposed legislation the Government seeks to prohibit the practice it describes as pattern bargaining. In doing so, the Government provides little in the way of justification. As with much in the Bill, clarity is not a strong point. The Bill seeks to penalise unions for embarking on pattern bargaining without really defining what is meant by the term.

The fact is that the Government is seeking to dictate to parties what form their agreements should take. This highly interventionist approach ignores completely the views of the overwhelming majority of industry participants that the pattern bargaining model is the most appropriate model for the construction industry.

In the current round of bargaining (2002-2005) an industry compact was reached through negotiation without disputation or lost time or resort to protected industrial action. The CFMEU agreed to a document in a certain form as did

many individual employers. The agreement was then approved in individual workplaces by employees who were to be covered by the agreement and were then lodged with the AIRC for certification.

Some employers exercised their rights under the WR Act to seek a certified agreement that differed from the "pattern". The most celebrated example is Grocon (and their associated corporate entities). Grocon commenced negotiations with the union after they were not satisfied with the industry negotiated outcome. Daniel Grollo explained to the union that his business was unique and he required a different outcome. The parties were unable to reach agreement during the course of those initial negotiations. Grocon then sought to reach agreement directly with their employees through a s170LK agreement (non-union) agreement. The s170LK agreement was put to the workforce who rejected it by a three votes to one margin.

Grocon resumed negotiations with the CFMEU and eventually employees of the company voted to approve a s170LJ (union) agreement which differed to the pattern. Prior to that outcome being achieved the union initiated bargaining periods pursuant to section 170MI of the WR Act against the various Grocon corporate entities. Both the union and the employer negotiating parties threatened to take legally protected action pursuant to section 170MO of the WR Act. Agreement was reached also with the assistance of Vice President Ross of the Australian Industrial Relations Commission.

Around the time of these negotiations Grocon lodged various applications in the Federal Court of Australia and the Supreme Court of Victoria. Grocon lodged separate applications in the Federal Court alleging breaches of sections 187AA (alleging the union was taking industrial action to pursue strike pay) and 170MN of the WR Act (alleging the union and its members had taken unprotected industrial action during the life of a certified agreement) against the union and

several named officials. Grocon also instituted action in tort in the Supreme Court against the union and several named officials.

We submit that this sequence of events demonstrates that the current system delivers sufficient flexibility to accommodate the requirements of all parties. Whether they are content to be parties to agreements in the same form as the industry negotiated outcome ("pattern agreements") or seek outcomes different to what was negotiated centrally. It is also instructive to note that the final arbiters are, in all cases, the workforce who will be covered by the agreements. Pattern or non-pattern, a valid majority of employees must approve the document. The WR Act also has various means of protecting their legal interests and pursuing their rights if they believe a union, officials or others are acting outside of the framework of the WR Act.

The Government has failed to make a compelling case to justify denying negotiating parties the ability to adopt pattern agreements.

The Government's real objection to pattern bargaining is centered on its collective, union initiated character and the fact that the threat or the ability to negotiate and organise collectively potentially provides for better outcomes for members. This is the real criticism of pattern bargaining. Not the method but the outcomes. Indeed, the Government explicitly promotes a double standard in respect to collective bargaining. That is, the Government is quite happy to promote pattern bargaining where the effect is to impose pre-determined employer parameters, but not where it reflects a desire by workers for new benefits or real wage increases.

The OEA stated in evidence before the Senate Estimates Committee that there were 'framework' Australian Workplace Agreements (AWA's) in use that "tend to look fairly similar." (Senate Committee Hansard, 10/2/99) Mr Hamberger further stated: "We would see potentially the development of framework agreements that have a fairly high degree of consistency as potentially, if done well, a quite

positive development". Indeed, the OEA devotes considerable resources to developing AWA's that can be applied uniformly to employers in an industry

So called 'pattern bargaining', or the level plying field model is of particular concern to employers who operate in sectors that are labour intensive but with a low capital base (such as the construction industry). In such a context, the ability to obtain a competitive advantage through investment in technology and plant is very limited. Essentially, the only area in which costs can be significantly decreased is in the area of wages and overall remuneration. Therefore, the issue of being able to effectively compete comes down to a management choice of whether wage levels ought to become the principal determinant in who wins a contract.

A further employer impetus towards pattern bargaining concerns the logistics and resources involved in committing to enterprise bargaining. That is, the idea that each enterprise should "tailor" its industrial relations arrangements to suit its own circumstances, simply does not make sense in a large number of Australian workplaces. The construction industry for example, is comprised of 95,000 enterprises that are overwhelmingly small, under-capitalised businesses employing less than 10 employees. (ABS Cat. 8772.0 'Private Sector Construction Industry' Jan 1999). The idea that each should have its own specially formulated arrangements is both unattractive (in a financial sense) as well as impractical. It is also worth noting that construction sites can have any number of employers working on the same project and it makes good industrial relations sense that there is commonality of terms and conditions of employment at the one workplace.

What is clear is that the Government is prepared to outlaw a system that works and to replace it with guaranteed disputation. Where construction industry companies are banned from pattern bargaining the result will be anarchy. On any given site employees of different companies may have different start and finish times, different rostered days off and different rates of pay.

Under the Bill as proposed agreements will also expire on different days (as agreements cannot have common expiry dates as they do currently and must expire three years from certification). This will inevitably result in sites being disrupted because the employees of a particular contractor may be exercising their rights to take protected action in negotiating a new agreement. In an industry where the sequencing of work is vital it is foreseeable that a site will be disrupted time and time again as the numerous employers on the site conclude their individual negotiations at different times.

4. ALLEGED REGULATORY FAILURE

The Terms of Reference relevantly provide as follows:

> (d) regulatory needs in workplace relations in Australia, including:
>
> (i) whether there is regulatory failure and is therefore a need for a new regulatory body, either industry-specific such as the proposed Australian Building and Construction Commissioner, or covering all industries,
>
> (ii) whether the function of any regulator could be added as a division to the Australian Industrial Relations Commission (AIRC), or should be a separate independent regulator along the lines of the Australian Competition and Consumer Commission or Australian Securities and Investments Commission, and
>
> (iii) whether workplace relations regulatory needs should be supported by additional AIRC conciliation and arbitration powers

We submit that we have demonstrated that through our case study dealing with the industry negotiations and Grocon that there are no needs for industry specific legislation and nor is there any requirement for industry specific regulatory body. We would further submit that there should be no regulatory body covering all industries arising out of this Inquiry due to the fact that, notwithstanding the Terms of Reference, that the Inquiry has concentrated on the construction industry and it is mainly been those associated with the industry that have made submissions.

Further, we would submit that the industry should not be treated any differently than any other. That is, the parties in the industry have available to them specific

remedies if they believe their legal rights are being infringed and the ability to pursue those legal rights.

The OEA publication "The Workplace Relations Act 1996 – A Construction Industry Guide" (at **Appendix E**) shows that sufficient regulatory and punitive provisions exist in the current law to deal with any alleged problems. These are some of the comments that the OEA has said about the current regulatory system:

- "Any arrangements regarding compulsory unionism and 'closed shops' are unlawful, regardless of any award or agreement (Section 4)."
- "Strike pay is now unlawful, but industrial action during genuine bargaining for agreements is permitted. (Section 5).
- "Secondary boycott provisions, which have been restored to the *Trade Practices Act 1974*, can stop secondary boycott action which could cause loss or damage, or a lessening of competition (Section 5)."
- "An employer cannot be forced to sign an industrial agreement as a condition of working on a site. Employers and their employees have the right to choose whether or not to have a workplace agreement and the type and content of that agreement."
- "The OEA can take a breach of the freedom of association provisions to the Federal Court, or may give free legal representation to anyone else taking such action. Those affected may also take their own case to the Federal Court.
- "Compulsory unionism is illegal. Union preference clauses, in agreements or in awards, can no longer be enforced. Union membership cannot be a condition of employment."
- "Industrial action must take place during a bargaining period if it is to be considered 'protected' (that is, free from civil liability for damages)."

- “In many cases, section 127 applications can play a useful role in ending industrial action. The bringing of an application may be enough to encourage a return to work without the AIRC having to issue an order.”
- “It is now illegal for an employer to pay strike pay, for a union (or its representative) to take or threaten to take industrial action to pursue strike pay, or for an employee to accept strike pay.”

We would also submit that the evidence in respect to the Regulatory body which has been established and arisen out of a pre-emptive recommendation from Commissioner Cole, the Taskforce, demonstrates the partisan nature of the type of Regulatory body the industry would receive arising out of the politically inspired Royal Commission.

The Taskforce inspectors have the powers pursuant to section 84 of the WR Act. Section 84 of the WR Act relevantly provides as follows:

> (4) Subject to subsection (4A), an inspector has such powers and functions in relation to the observance of this Act, awards and certified agreements as are conferred by this Act.
>
> (4A) A person appointed under paragraph (2)(b) to be an inspector has such powers and functions in relation to the observance of this Act, awards and certified agreements as are conferred on an inspector by this Act and specified in his or her instrument of appointment

One such power of the Taskforce inspectors would have is pursuant to section 178 of the WR Act which refers to the imposition and recovery of penalties for breaches of an award or certified agreement. We submit that the term “would” is appropriate as Nigel Hadgkiss has indicated in answers given in writing and on notice to the Estimates Hearing in the Senate Employment, Workplace Relations and Education Legislation Committee on 6 November 2003 that the Taskforce does not pursue underpayments of employee entitlements. The Taskforce has stated that although the Taskforce was aware of instances of breaches of

underpayment or non-payment of employee entitlements and that one of the Taskforce's performance indicators is "timelines in bringing actions against breaches of federal awards and agreements" apparently it is "not part of the Taskforce's remit to investigate instances of underpayment of employee entitlements in the building and construction industry (see **Appendix F** for relevant questions on notice and the responses). This begs the obvious question as to why this is the situation.

Another such body which may be classified as a regulatory body and has been in operation for a number of years is the Office of the Employment Advocate ("OEA"). The OEA also appoints inspectors with similar powers to those of the Taskforce inspectors. The operations of the OEA have also been partisan. Although the OEA inspectors operate in all industries we will give an example of the type of behaviour they engage in and the kind of cases they seek to put before the Courts. One such example is *Hamberger (Employment Advocate) v Williamson & CFMEU* [2000] FCA 1644 (and on appeal [2001] FCA 1164 (24 August 2001)). In this case a subcontractor secretly taped (after the subcontractor had received advice from a person employed by the OEA) and attempted to "set up" a CFMEU shop steward by lying to him to attempt to have the shop steward make admissions which may be used in a court proceeding against the union and the shop steward.

In this case Justice Marshall was critical of the actions of person employed by the OEA who did not discourage the secret taping of the shop steward and told the subcontractor what kind of evidence would be required to assist in a successful prosecution. Justice Marshall found that:

- the recording was made secretly (and its admission into evidence was rejected);
- the conversation recorded was a orchestrated confrontation;
- the recorded conversation contained deliberate lies to provoke a dispute with the shop steward; and

- the lies which were told were likely to cause the shop steward to make an admission.

Justice Marshall dismissed the case. Not content with this outcome the OEA appealed to a Full Court of the Federal Court which upheld Justice Marshall's decision.

INDUSTRY SPECIFIC LEGISLATION

One of the terms of reference which interested parties are asked to comment on is the following:

> (c) the findings and recommendations of the Cole Royal Commission into the Building and Construction Commission, including an assessment of:

(i) whether the building and construction industry is so unique that it requires industry-specific legislation, processes and procedures.

Commissioner Cole made general findings that the "rule of law" did not apply in the construction industry and a "cultural change" was required. On 25 March 2004 a report tabled in Parliament by Minister Andrews of Workplace Relations titled "Upholding the Law – One Year On: Findings of the Interim Building Industry Taskforce" ("Taskforce Report") by Nigel Hadgkiss. The Taskforce Report goes further than Commissioner Cole by asserting that "the challenge confronting the Taskforce is not to simply restore the rule of law to the industry but rather introduce it for the first time."

One such assertion which gained currency before the Royal Commission was that the CFMEU often ignored section 127 Orders of the Australian Industrial Relations Commission ("AIRC") (section 127 Orders are to stop or prevent industrial action). Lawrie Cross (former Manager of the Master Builders' Association of Victoria) gave evidence that the CFMEU "has consistently shown

that it will not comply with section 127 orders of the AIRC". Lawrie Cross then provided three examples to support his assertion. In one of the examples provided the AIRC did not even make any section 127 orders.

The Taskforce Report also asserted that "AIRC orders are inadequate to prevent or stop unlawful industrial action in the building and construction industry." The Taskforce Report provided one example to support this assertion. The Taskforce Report referred to an order apparently made by Commissioner Harrison on 7 October 2003 and then breached the following day. The decision of Commissioner Harrison (PR939102) dated 8 October 2003 held at paragraph 13 that "[h]aving regard to all of the circumstances and the matters set out above, the Commission dismisses the applications for Orders pursuant to s.127(2)." The Commissioner dismissed the application after commenting on the "absence of evidence".

Given the rhetorical flourishes and lack of detail in most of the other "evidence" and examples provided in the Taskforce Report it is difficult for the union to determine the truth or otherwise of much of the material supplied but given the factual inaccuracy of the one example that we refer to above it raises real doubt as to the accuracy of the other matters raised in the Taskforce Report. What we do know is that:

- Of the 34 files referred by the Royal Commission in February 2003 the Taskforce has reviewed those files and a decision was made to take no further action.
- In March 2003 a further 16 files were referred to the Taskforce by the Royal Commission and the Taskforce has reviewed those files and a decision has been made not to take any further action.
- In May 2003 the Commonwealth Attorney-General referred 52 cases arising from the Royal Commission to the Taskforce. One case has been

finalized through the Federal Court and four are under active investigation. As for the rest the Taskforce has discontinued its enquiries.

(See Taskforce Report at 6.5)

Currently in Victoria there is one matter before Federal Court initiated by the Taskforce. In the Taskforce Report it is misleadingly under the heading of “inter and intra-union disputes and violence”. It is an application pursuant to section 170NC of the Act alleging coercion by union and an official against a subcontractor. There are no allegations of violence involved or threats of any physical nature at all. The union will be vigorously defending the allegations.

Given the staff (47), budget ($8.9m) and assertion that the rule of law does not operate in the building and construction industry it is somewhat surprising that there is currently only one matter before the Courts in Victoria. This is only the second matter that the Taskforce has taken to Court against the CFMEU or its officials in Victoria since it commenced operations on 1 October 2002.

In conclusion we would submit that the situation in the building and construction industry is not one which requires the kinds of coercive and punitive measures as proposed by the Bill in respect to the asserted lawlessness said to be so prevalent. It should be no different to any other industry or sector where affected parties have legal rights and they are entitled to pursue them if they believe that conduct or action taken against them by the CFMEU or any other person is behaving illegally. Grocon certainly asserted their legal rights and any other employer is entitled to take the same or similar action if they believe that it is warranted.

5. TRAINING

The Taskforce Report, which we have referred to in Section 4 of our Submissions, makes a sweeping reference to training. In what the Taskforce Report refers to as a case study titled “pay now, OH&S accreditation later” it makes the imputation that the union sponsored training is merely a revenue raising mechanism. The union certainly takes great issue with any such imputation. In this section the union will deal with a specific aspect of the training regime which relates to persons predominately from a non-English speaking background with relatively lows levels of formal training and education. It deals with how the education unit of the CFMEU has empowered workers in the industry. Although this section may not fall directly within one of the Terms of Reference we believe that this is an important aspect of the union’s activities which the Senate Inquiry should be made aware of.

The Education and Training Unit of the Victorian branch of the Construction, Forestry, Mining and Energy Union – Construction and General Division was established in 1993. Since that time, the Unit has extended the reach of its educational programs from 43 workers in 1993 to 8,000 in 2003 and has expanded the scope of learning offered from induction and short courses to Certificates III, IV and Diploma.

This part of our submission is about the development of the Education and Training Unit and in particular, the way in which principles of adult education have been integrated into every aspect of the Unit’s work in order to improve access and success for all workers regardless of their educational, language or cultural backgrounds. The submission outlines the working and learning environment, the history, philosophy and systems, and some of the methodologies that have assisted workers to regain confidence in their capacity to benefit from the education system.

Case Study One

Profile: W is 47, he left school at 15 and has had 32 years experience as a skilled labourer on construction sites. W. commenced training with the Unit in 2000 and has completed short courses including Occupational and Advanced Occupational First Aid, Traffic Management and Asbestos Removal and has completed both Certificates III and IV in OH&S. He is currently studying for the Diploma in OH&S.

Quote: If someone had of told me 5 years ago I'd be writing reports like this, I'd've told em they were mad.

Quote: "W is considered a highly valuable employee because of his ability, industry experience and formal qualifications. People with W's skills are hard to find. His OH&S qualification has definitely contributed to his security of employment".

W is currently the OH&S representative with a major Construction company.

BACKGROUND AND ESTABLISHMENT OF THE UNIT

The CFMEU – Education and Training Unit grew from research carried out in 1990, for the Victorian Building Industry Agreement Consultative Committee. This research was to assist the implementation of a clause in the VBIA relating to the education and training needs of workers in the Victorian building and construction industry and in particular the communication needs of non-English speaking background workers.

The research found that access to formal education and training programs for workers was limited, particularly for workers with significant general education and communication needs and that these limited opportunities impacted negatively on workers' formal understanding of their industrial agreements, OH&S matters and the significant structural changes occurring at the time within the industry and broader society.

The research identified a specific need in relation to migrant workers and workers with little formal education and led to funding to the CFMEU from the federal government's Workplace English Language and Literacy program for the establishment of education and training to address the language and literacy needs identified in the research.

The dominant models of literacy and ESL teaching at the time were stand-alone English courses, which usually dealt with basic survival skills. It was clear to the CFMEU, however, that language and literacy training would be more effective if delivered in the context of workers' industrial lives. And so a model of integrated education and training was developed that was specific to the building and construction industry.

Our target was workers in the non-trades classifications. This was because research showed that outside of traditional apprenticeship and licensing, training for workers in the building industry was minimal.

In addition to the cultural and educational profile of the workforce, there were other issues that needed to be considered in determining how successful vocational education programs could be structured. These were:

- the cyclical nature of building activity
- the fact that workplaces are site based and are transient
- workers are itinerant
- work is largely undertaken through small subcontracting companies
- there is a significant under representation of women workers
- large numbers of migrant workers are concentrated in less secure and more dangerous occupations such as asbestos removal
- half of CW 1 - 4 workers are aged 20 to 40 years and 25% are between 40 and 49 years of age, there is a significant fall off of workers

remaining in the industry beyond age 50 and only 2% of workers are under 20 years of age

- 24% of the workforce has less than 5 years industry experience, 41% has less than 10 years experience and 20% of workers have 20 years experience or more.[1]

In addition most workers in the target group had left school early and had negative memories of their education.

The challenge therefore, was to design a system that could effectively meet the vocational and educational needs of workers in an industry with these characteristics. The following procedures were developed in 1993, continue today, and are integral to the success of the delivery system:

- Host sites/venues were established in each of the major metropolitan and country Victorian regions. Where ever possible these were large commercial construction sites, which could offer reasonable training facilities. By establishing host sites workers from smaller neighbouring sites could access training on the host site.

- A database was established which could keep training records of individual workers and which could track workers as they moved from site to site. In this way, workers commencing training on one site could complete that training on another site.

- A program of awareness raising which would give workers a positive experience of training was initiated. OH&S representatives and shop stewards were targeted for specific courses relevant to their needs.

[1] CFMEU data base.

- Clauses on training were written into collective bargaining agreements enabling organisers and stewards to treat education and training as any other industrial entitlement.

- Courses were selected that had immediate relevance. All were competency based, nationally accredited and recognised.

- Language, literacy and numeracy teachers were employed, and building and construction workers were trained as trainers. Partnerships for learning were developed and both industry trainers and specialist teachers shared their skills for the benefit of the program.

Slowly a culture of learning developed in the industry and with each worker who had a positive experience with the Unit, word spread.

KEY FEATURES OF THE INTEGRATED DELIVERY SYSTEM - A CASE STUDY

Case Study

The subject of this case study is 38 years old and has worked in the Victorian Building and Construction Industry since he migrated to Australia from Portugal in 1989. He was first referred to the Unit in 1996, while he was working as a labourer, fetching scaffolding for a team of qualified scaffolders.

In Victoria, only workers who hold a Certificate of Competency issued by the State Authority can carry out the erection, inspection and dismantling of scaffold. This Certificate is achieved once a worker has completed formal written, knowledge and practical assessments conducted in English. Without this Certificate, under the law, a worker has to be supervised when working in the erection and dismantling of scaffolding.

Our member had attempted to complete a basic scaffolding course at night school to prepare him for the Certificate but had dropped out for a range of reasons including family commitments, because he was tired after labouring all day, because sometimes he had to work overtime and because he found the classes daunting. Like many workers in the industry, he was trapped. Without the Certificate of Competency, his employment in an insecure industry was even less secure.

Without adequate experience and training, his understanding of OH&S could have placed himself and other workers at risk. Without room to develop, his capacity to participate in the democratic structures in his workplace was restricted. His shop steward was concerned and as a result referred him to the Education and Training Unit.

After talking with this worker about what he wanted, he was referred to one of the English Second Language (ESL) teachers working with our Unit. He undertook a learning needs assessment and a training plan was negotiated with him and his employer. He commenced an Emergency First Aid course and then a basic Occupational, Health and Safety course. Both were delivered by an ESL teacher from the Unit.

After successfully completing the OH&S course, he was ready to tackle the scaffolding requirements. He was issued with a union trainee permit and log book and was asked to complete 800 hours supervised training on the job. He was still out on site assisting the scaffolders but now his work was more structured and had a purpose that was significant to him. During this time he was able to access ESL help from the Unit on an individual basis. After 12 months, he felt confident enough to enroll in the union's scaffolding course - a course which leads to the Certificate of Competency Assessment. This time his learning was facilitated by an industry trainer and backed up by an ESL teacher.

In 1998, he topped the class in the Basic Scaffolding assessment and went on to successfully complete an Intermediate Scaffolding course with the Unit.

This story illustrates how migrant workers can be meaningfully represented and how their vocational needs can be progressed by meeting their learning needs. At the site level, his shop steward was alert to the disadvantages that this worker faced and used the policies and services of the Union to do something for him. Finding time, energy and the necessary language support for training had been an issue for this worker. The shop steward used the Collective Bargaining Agreement to negotiate an effective and workable training plan that included training being carried out during ordinary working hours. On site, fellow workers applied industry and union policy on training and OH&S to provide him with proper practical experience and support. His employer recognised the workers' skills but knew that secure employment was untenable without the required industry ticket. He was willing to invest in the education of this worker and was glad that the CFMEU provided a viable mechanism to do so.

At the Union's base, the Education and Training Unit integrated into its delivery system strategies to assist this worker to develop essential general educational skills with the relevant vocational skills. The Unit used the Emergency First Aid course to introduce English Language and Literacy training. It did so for the following reasons:

- the high rate of fatalities and injuries in the construction industry makes first aid a priority skill for most workers – the course therefore has relevance and meets an immediate need
- there is a high practical component – the course encourages participation and cooperation amongst participants and is therefore a good vehicle for the introduction of collective learning principles
- the course involves a lot of demonstration and repetition – providing a basis for the development and consolidation of simple language structures
- most workers succeed

The course at a minimum is completed in 6 hours. When delivered as a vehicle for English language development, the course is 40 hours.

Similarly, the OH&S course which followed had relevance and met immediate vocational needs but although the 40 hour module incorporates practical applications of learning, it has a greater emphasis on the development of underpinning communication skills, on identifying and analysing problems and on recommending solutions.

The ultimate aim - the scaffolding ticket - was only attempted once the worker had developed some independent learning skills and, through grappling with communication issues in his OH&S course, had sufficient confidence in his ability to cope with the demands of the scaffolding course.

EDUCATIONAL POLICY AND PHILOSOPHY

Underpinning the capacity of union shop stewards, health and safety representatives and activists to assist members is a national policy that fundamentally supports the development of integrated education and training.

The policy provides a description of the model as follows:

> *The integration of communication competency in vocational education and training means that communication skills are developed concurrently with technical skills. This involves the analysis of the actual communication skill requirements of particular jobs, the identification of individual worker's education and training needs and addressing the communication competencies required according to that need. The issues inherent in award restructuring, the demands of the workplace and workers' participation in education and training demonstrate the need for the integration of trade union training.*

An important element in this definition is that in addition to protecting workers industrial conditions there is a need to proscribe against the screening and marginalisation of workers based on unrealistic and discriminatory language and literacy requirements.

The policy goes on to outline the educational philosophy which informs the development of an integrated system.

> *The involvement of the CFMEU in the delivery of training has led to the beginnings of a national system of integrated education and training. The philosophy which underpins this system values the existing skills and knowledge of workers, recognises that theory is based on practice and that theory advances further practice, acknowledges the strength of collective learning, emphasises that language, literacy and numeracy underpin all facets of employment, education and training and strives to provide continuity and consistency in education and training regardless of a worker's employment status.*

There is no doubt that the system when implemented maximises chances for workers of Non-English speaking background and workers who have low levels of general education.

PRAXIS

In recent years, one of the greatest indicators of the success of the system has been the increase in the number of workers participating in Certificate courses, given that these courses involve a long term commitment. The Certificates 111, IV and Diploma in OH&S are examples of this. The Education and Training Unit currently has 185 workers enrolled and 177 on a waitlist for the Certificate III in OH&S. 32 workers have finished the course.

The workers who have enrolled in the Certificates in OH&S, in general, left school at an early age and have had a considerable break from formal education. Most have completed basic modules or short courses with the Unit prior to expressing interest in the Certificate.

Because of the profile of our students, it is important that a range of methodologies are employed to provide initial support and to assist workers to develop the fundamental skills that will enable them to become independent learners in further education.

A formal one to one interview process is conducted by a literacy/ESL teacher on enrolment in the certificate courses so that individual learner needs may be assessed. Workers are briefed on the demands of the courses and given some information to take away and think about. If workers decide to proceed with their enrolment (as most do), a smorgasbord of strategies are adopted by the teachers to establish fundamental learning skills. These strategies require workers to draw on their own life and work experience. Participants' own anecdotes and stories from the workplace as well as oral histories and scenarios delivered by guest speakers form the basis for the presentation of OH&S theory, including OH&S history, principles, philosophy and policy. Text based resources taken from the workplace are used to demonstrate how dissemination of information and record keeping can be used to enhance OH&S practice. Slowly models of research, analysis and synthesis are introduced and developed, and workers requiring extra assistance particularly with written and electronic forms of communication are able to do so, on a one to one basis. Frequently, however, workers use the collective to assist each other where difficulties occur.

In meeting assessment requirements workers' are encouraged to choose examples from their workplace that demonstrate their ability to apply the requisite knowledge and skills. In doing so, their course becomes not only a personally

fulfilling endeavour but one which assists them in their goal to make construction sites safer places to work.

Case Study Three

Profile: J is 62 years old. He left school at 14 and migrated to Australia when he was 19. J has 25 years construction industry experience most of that working with the crane crew. J. commenced training with the Unit in 1997. He has completed a range of short courses including Occupational and Advanced Occupational First Aid, Spotters, Traffic Management and Asbestos Removal, and has completed Certificates III and IV in OH&S. He is currently studying the Diploma OH&S. J. is highly regarded in the industry for his wealth of knowledge and experience. J. is rightly proud of his achievements and willingly provides his views of the integrated system to WELL evaluators and to other bodies seeking information of the success of literacy programs similar to those run by the CFMEU Education and Training Unit.

THE LONG HAUL

Each year the Unit provides a report of its activities to the Workplace English Language and Literacy Program. It reports workers' achievements in language, literacy, numeracy and key competencies using the National Reporting system. Each year the percentage of workers falling in the higher levels of competence increases. Each year existing students fall out of the WELL priority group because of the gains they have made. Although there are plenty of others to take their place, the general profile appears to be changing for the better.

The key factors affecting this change are time and consistency of effort. The workers who participate so vigorously in our programs put their trust in their fellow workers, their employers, union delegates and officials and the teachers and trainers in the Unit. Many workers have felt and some still do, that to attend

training will lead to the sack; others fear that to expose their learning needs will lead to humiliation and jeopardise their employment prospects. It is, however, the cooperative arrangements forged by unions and employers that have turned the situation around in 10 years. Construction workers in Victoria used to express cynicism and negativity in relation to education and training in Victoria. In 2004, workers in the Victorian commercial construction industry value the educational opportunities that their union provides and consider these opportunities to be an industrial right. That most workers, regardless of their backgrounds, feel some ownership of the vocational education system, and have some control over how, when and where their learning takes place is one of the greatest features of the work our Unit undertakes.

6. SAFETY

The CRC's recommendations in relation to safety in a large measure sought to take away any role for unions. Commissioner Cole formed the view that the unions used safety for industrial purposes and that safety was too important to be used in this way. We can at least concur with the latter sentiment. We submit that the construction industry is a far safer industry than what it was in years gone by and we believe that the most significant factor which has led to the increased levels of safety is the vigilance of the unions and our members. We view with great skepticism any attempts to take the union out of the equation. We make no apologies for our vigilance and believe that it has prevented innumerable injuries and countless deaths.

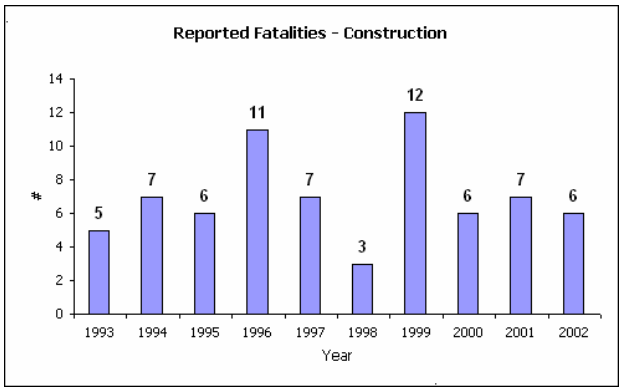
In saying that the construction industry is still a dangerous industry and injuries and deaths unfortunately will occur. In terms of WorkCover claims and workplace fatalities the construction industry experiences higher rates of injury and death than most other industries. The table below outlines the large number of claims received by WorkCover each year from the construction industry. Over the period 9.3% of all claims came from construction.

Table: Construction Industry WorkCover Claims Reported by Year

Pre 1992/3	1992/3	1993/4	1994/5	1995/6	1996/7	1997/8	1998/9	1999/2000	2000/1	2001/2	Total
34600	5152	3922	3017	3031	2884	2815	2771	2760	2831	2747	66530

Construction work involves a dynamic working environment where hazards can often pose sudden and immediate risks to workers or the general public if they

are not systematically managed and controlled. WorkCover fatality figures for the industry can be seen in the table below:



Safety is, and will remain to be, the most important issue for our industry. It is our view that the Government's response to the CRC in this area is not helpful. The CFMEU is currently participating in the review of the Victorian OH&S Act being conducted by Chris Maxwell QC. As an organisation we devote significant resources to assisting members with their concerns about site safety.

We are committed to best practice in safety. We will not accept employers sacrificing safety to save time or money. Our approach will be to work cooperatively with employers and Worksafe Victoria to achieve an injury free industry. Where breaches of the law occur the CFMEU will continue to lobby for appropriate penalties.

This commitment can be seen in the detail contained in the CFMEU database of construction industry safety incidents. Between September 1998 and November 2003 officers of the union recorded 2759 safety incidents on the database. A representative sample of the incidents is included below.

Date and Time	Project Management	Incident Type	What Happened	Type of Injury	Employer
12-10-98	Probuild	Falling	Worker was on the roof of		

Date and Time	Project Management	Incident Type	What Happened	Type of Injury	Employer
8.40am			temporary toilet block unscrewing corrugated sheets, which had been sawed through from 35mm to 15mm. The timber snapped and he fell onto a concrete floor. He was sent to Monash Hospital.		
22/10/98 7.10.am	Concrete Constructions	Alimak	Alimak No. 2 was being dismantled. Two men were working from the top and removing the landing gates supports on Level 16. Four pipe sections approximately. 3.2 long and 75mm thick fell. Two sections and landed in the secured no go area and two sections landed on the protection gantry.	Open Wound	
1/4/2000 9.10am	Baulderstone	Form Work	Formwork fell one level from formwork on level 13 to deck of level 12, injuring his pelvis.	Break	Caelli
30/03/00	APM Group	Hazardous Substances /Electrical	Installing burglar alarm in ceiling the worker came into contact with a metal electrical conduit that was live because the insulation	Death	

Date and Time	Project Management	Incident Type	What Happened	Type of Injury	Employer
			on wiring had deteriorated and live wires were in contact with metal. He earthed himself when his head touched the roof and he was electrocuted and died		
23/07/01	Probuild	Falling	Worker had climbed out of a scissor lift. When he was attempting to climb back in he put his foot on the platform access gate which opened, causing him to fall backwards 3 metres off the machine onto the floor. Other access gates on site were defective (not closing and latching as per Australian Standards). The access gate on the machine concerned was the same but if could not be ascertained whether it was in the same condition prior to the incident.	Broken ribs, punctured lungs	
11/12/01	Mirvac	Falling Objects	A glass sliding door located within Apartment 601 on level 6 was dislodged from the door jam and fell onto		

Date and Time	Project Management	Incident Type	What Happened	Type of Injury	Employer
			the balcony perimeter baladstrade, causing the balastrade to shatter and the ensuring debris fell onto two workers working on a swingstage. No one was injured as a result of the incident.		
9/12/02	PK Demolitions Pty Ltd	Scaffolding	Existing scaffold does not comply with AS4576. Insufficient ties, gaps between planks etc. Also required an engineers certificate that props are sufficient for the structure stability. A smoke test required for asbestos in relation to the inspection of wall and column cavities for the presence of asbestos prior to demolition of the building.		
12/12/02 9.45am	Construction Engineering	Other	Employee of Burton Industries complained of chest pain after morning tea break. He attended first aid facility on site where he collapsed with a heart attack.	Heart Attack	Burton Industries

Date and Time	Project Management	Incident Type	What Happened	Type of Injury	Employer
			Employee had previously spent the morning cutting sandwhich panel with a power saw.		
19/03/03 10.20 am	Leightons	Falling	Man fell off working deck causing injury to back. Pliers punctured him back. Ambulance called.	Punctured to lower back.	Eltrax
25/02/03	LU Simon Builders Pty Ltd	Falling Objects	A member of the public walking along the rear of the site (on the footpath) was hit by a falling object from above. He was conveyed to the Royal Melbourne Hospital where he had stitches inserted and later allowed to go home. It was also noticed that Z Ties were used to secure the supporting mechanism for the false cars with the nuts welded to prevent dislodgement.	Head lacerated	Australian Art Resource

7. A SINGLE DWELLING HOUSE

In conclusion we would seek to put before the Senate Inquiry an example of how the Bill would create complexities and confusion (and presumably additional costs for employers) where currently none exists. The example we put before the Senate Inquiry relates to the definition of Construction Industry contained in the Bill. As the examples below demonstrate there is no logic or rationale as to what may or may not be covered by the legislation if enacted.

The Bill excludes from its coverage the construction, repair and restoration of a single dwelling house. Below are three structures that have been constructed.

Construction costs on the above detached home were approximately $80,000.

THE BILL WOULD NOT APPLY TO THIS CONSTRUCTION.

Construction costs on the above semi-detached home were approximately $100,000.

THE BILL WOULD APPLY TO THIS CONSTRUCTION

Construction on the above detached home cost in excess of $1 million.

THE BILL WOULD NOT APPLY TO THIS CONSTRUCTION

Clearly, there is no public policy imperative for differentiating between the projects above. Investigation of the housing industry was specifically excluded from the CRC. Therefore it can not be argued that the residential sector of the construction industry is free of problems. The sector has simply been protected from scrutiny by the Government.

The exclusion of the housing sector from the Bill is a graphic illustration of the blatant anti-union bias of the CRC and the Howard Government's response to it.

Conclusion

The CFMEU asserts that we have a duty to represent the industrial interests of our members, and that is a duty that we conscientiously uphold. Further, our members have the democratic right to belong to a militant union. Victorian construction workers seek nothing more that to work together to receive reasonable pay for their labour and to work in conditions that do not pose a risk to their health and safety.

The Bill would deny the rights of the CFMEU and its members and would guarantee the erosion of wages and conditions in the industry. The Bill is without merit and we call on all Senators to oppose it.